



State of Vermont
Vermont Department of Education
120 State Street
Montpelier, VT 05620-2501

MEMORANDUM

To: Superintendents, Principals, Special Education Coordinators
From: Armando Vilaseca, Commissioner
Re: Use of Physical Restraint and Seclusion Rulemaking and Guidance
Date: August 4, 2010

The issue of rules regarding the appropriate use of physical restraint and seclusion has generated much discussion over the past few months, and was a discussion item at the State Board of Education's June 14, 2010 meeting. Our department initially considered proceeding with adopting rules under the emergency rules process. After much consideration and discussion internally, and as a result of the correspondence I have received, I have decided to have the proposed rules on restraint and seclusion proceed through the regular rulemaking process. I will ask the Board to vote to initiate the rule-making process at its August 17 meeting with the goal to vote on permanent rules sometime shortly after the beginning of the new year. However, in the meantime I am including my recommended guidance on how schools should handle any type of restraint or seclusion while the rules process proceeds.

There are several reasons for this decision. One is that emergency rules can only be in effect for 120 days. This would not be enough time for the regular rules process to conclude, and would leave a time gap between the emergency rules expiring and permanent rules being implemented. In addition, these are controversial rules and I want to make certain that we do this in a manner that will allow for all appropriate comment and a timeline that will permit final rules to be in place this winter during the 2010-11 school year. Finally, the emergency rule process was generating so much controversy that it was distracting from a discussion of the substance of the rules and I believe it is in the best interest of children and schools to eliminate that distraction so the discussion can focus on the real issue – the use of restraint and seclusion in schools. I want to assure you that this process will lead to permanent rules guiding restraint and seclusion, and that I am committed to doing what I believe is in the best interest of our children, while at the same time providing clear guidelines for school staff.

I understand that there are individuals who will be disappointed in not continuing with the emergency rules process, but based on the input I have received from many perspectives, I do not feel the emergency rule process is the best way to approach these rules to proceed at this time.

Along with the guidelines for using any type of restraint or seclusion until final rules are adopted, also attached to this memo are the draft rules that will be up for discussion/consideration.

Please contact Susan Marks at susan.marks@state.vt.us or 828-0555 if you have questions regarding this process. Thank you.

Commissioner's Guidelines on Physical Restraint and Seclusion Process while Rules are being Promulgated

At its August 17, 2010 meeting, it is anticipated that the State Board of Education will vote to initiate rulemaking on the use of restraint and seclusion in schools. The rulemaking process will take approximately five to six months. I am therefore issuing the following guidance on the use of restraint and seclusion until the new rules are finalized.

Chemical and Mechanical Restraint

Chemical and mechanical (not including seat belts or a safety harness in a vehicle) restraint are prohibited at all time.

Physical Restraint and/or Seclusion

Physical restraint and/or seclusion are only permissible in very limited and serious circumstances. If a student's behavior poses an imminent and substantial risk of physical injury to the student or others and less restrictive interventions would not be effective in stopping such imminent danger, physical restraint or seclusion may be used.

Physical restraint is never permitted if it restricts breathing, communication or causes unnecessary pain. Any restraint or seclusion shall only be imposed by school personnel who monitor the student face-to-face or are in direct visual contact with the student, if face-to-face monitoring is not possible.

Any physical restraint or seclusion shall be terminated:

- As soon as the student demonstrates any significant physical distress that might require medical attention;
- When the student's behavior no longer poses imminent danger of physical injury; or
- Less restrictive interventions would be effective in stopping the danger.

Use of any restraint or seclusion shall be reported to the building administrator and to the student's parents/legal guardians.

Seclusion as used herein does not include a "time-out" room which may be used to help student gain composure. A time-out room is:

- Unlocked at all times;
- Large enough to permit safe movement;
- Adequately lit, heated, ventilated and free of dangerous objects;
- A room with safe entry and exit so that the student may leave at any time;
- A room in which a student is visually monitored at all times by an adult;
- To be used as a temporary measure.

Rule 4500

**PROPOSED STATE RULES FOR THE USE OF
RESTRAINT & SECLUSION IN SCHOOLS**

4500.1 STATEMENT OF PURPOSE

To promote positive behavioral intervention and supports in schools, prohibit the use of mechanical restraint, chemical restraint, prone physical restraint, supine physical restraint and to restrict the circumstances under which restraint and seclusion may be used.

4500.2 APPLICABILITY

These rules are applicable to all preschool, elementary and secondary schools, approved independent schools and approved tutorial programs that serve students in whole or in part at public expense.

4500.3 DEFINITIONS

For purposes of these rules, the following definitions apply:

1. Chemical restraint means a drug or medication used on a student to control behavior or restrict movement that is not:

- (a) Prescribed by a licensed physician for the standard treatment of a student's medical or psychiatric condition; and
- (b) Administered as prescribed by the licensed physician.

2. Mechanical restraint means the use of any device or object that restricts a student's movement or limits a student's sensory or motor functions unless under the direction of a healthcare professional.

The term does not include seat belts in wheelchairs or on toilets, or a seat belt or harness used for balance or safety on a car or bus

3. Physical restraint means the use of physical force to prevent an imminent and substantial risk of bodily harm to the student or others.

Physical restraint does not include

- (a) The brief contact by an adult to calm or comfort;
- (b) The minimum contact necessary to escort a student from one place to another;
- (c) Hand-over-hand assistance with feeding or task completion; or
- (d) Techniques prescribed by a qualified medical professional for reason of safety or for therapeutic or medical treatment.

4. Prone physical restraint means holding a student face down on his or her stomach using physical force for the purpose of controlling the student's movement.

5. Supine physical restraint means holding a student, on his or her back through physical force for the purpose of controlling the student's movement.

6. Physical escort means touching or holding a student who is exhibiting minimal resistance without the use of force for the purpose of directing movement from one place to another.

7. Seclusion means the confinement of a person in a room or area from which the person is physically prevented or reasonably believes he or she will be prevented from leaving. The use of a time-out room for brief periods of time is not seclusion.

8. Time-out room means a designated room used to separate a student from others for a brief period of time for the purpose of preventing or stopping harmful behavior or limiting its intensity or to enable a student to regain composure and return to a class or other activity.

9. Emergency means a situation in which a student's behavior presents an imminent, and substantial risk of bodily harm to the student or others.

10. Substantial risk means an imminent threat of bodily harm where there is an ability to enact such harm. Substantial risk shall exist only if all other less restrictive alternatives to diffuse the situation have been exhausted or failed or the level of risk prohibits exhausting other means.

11. Student means a student enrolled in a school as defined in paragraph (12), except that in the case of a independent school or approved tutorial program, such term means a student enrolled in such a school or program that serves students in whole or in part at public expense.

12. School means any entity that is a public school preschool, elementary school or secondary school, approved independent school or approved tutorial program that serves students as a day or residential program in whole or in part at public expense.

13. Positive behavioral interventions and supports means an approach to preventing and responding to challenging behavior that:

- (a) Is proactive and instructional, rather than reactive.
- (b) Can operate on individual, group, classroom, or school wide levels.
- (c) Includes a system of continual data collection.
- (d) Relies on data-driven decisions.

14. Behavioral intervention plan means a plan that details strategies to address a student's behavior before, during, and after rule-breaking or other inappropriate behavior. The plan may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address problem behaviors.

15. Functional behavioral assessment means the analysis of a student's behavior patterns before, during, and after rule-breaking or other inappropriate behavior for the purpose of guiding the development of a behavioral intervention plan.

16. Aversives means a technique of behavior modification causing avoidance of a thing, situation, or behavior by using unpleasant or punishing stimulus.

4501 RESTRAINT AND SECLUSION; PROHIBITIONS:

4501.1 School personnel and contract service providers shall be prohibited from imposing on a student any of the following as defined in rule 4500.3:

- (a) Mechanical restrain.
- (b) Chemical restraint.
- (c) Prone physical restraint.
- (d) Supine physical restraint.
- (e) Physical restraint or escort that restricts breathing, communication, or that causes unnecessary pain.

4501.2 Physical restraint or seclusion shall not be used:

- (a) For convenience of staff;
- (b) As a substitute for an educational program;
- (c) As a form of discipline or punishment;
- (d) As a substitute for inadequate staffing; or
- (e) As a substitute for staff training in positive behavior supports and crisis intervention and prevention.

4501.3 Local education agencies and schools may have policies and procedures for the use of physical restraint and seclusion in school-wide safety plans, provided such plans are consistent with these Rules.

4502 CIRCUMSTANCES UNDER WHICH PHYSICAL RETRAINT AND SECLUSION MAY BE USED

4502.1 Physical restraint or seclusion, not otherwise prohibited by these Rules, may be used only:

- (a) When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;
- (b) Less restrictive interventions would be ineffective in stopping such imminent danger of physical injury; or
- (c) In accordance with a school-wide safety plan that is consistent with these rules; and
- (d) In a manner that is safe, proportionate to and sensitive to the student's:
 - a. Severity of behavior;
 - b. Chronological and developmental age;
 - c. Physical size
 - d. Gender
 - e. Physical, medical and psychiatric condition;
 - f. Ability to communicate;
 - g. Cognitive ability; and
 - h. Personal history, including any history of physical or sexual abuse.

4502.2 Restraint or seclusion shall be imposed only by school personnel or contract service providers trained by a State-approved training program unless, due to the unforeseeable nature of the danger of the circumstance, trained personnel are not immediately available.

4502.3 Restraint or seclusion shall only be imposed by school personnel or contract service providers who-

- (a) Continuously monitor the student face-to-face; or
- (b) Is in direct visual contact with the student, if school personnel safety is significantly compromised by face-to-face monitoring.

4502.4 Such restraint or seclusion shall be terminated as soon as –

- (a) The student demonstrates significant physical distress indicating a possible need for emergency medical assistance; or
- (b) The student's behavior no longer poses an imminent danger of physical injury to the student or others;
- (c) Less restrictive interventions would be effective in stopping such imminent danger of physical injury.

4502.5 The student shall be evaluated and monitored for the remainder of the school day on which physical restraint or seclusion was imposed.

4503 DOCUMENTATION AND REPORTING THE USE OF RESTRAINT AND SECLUSION

4503.1 Each and every use of physical restraint or seclusion and the reason for each use shall be-

- (a) Documented in writing in accordance with the requirements of Rules 4503.2;
- (b) Reported to the building administrator or designee immediately;
- (c) Reported to the student's parents or legal guardians verbally or electronically immediately, or as soon after as is reasonable, and in no case later than twenty four (24) hours after the event and shall document each instance of notification; and
- (d) Provided in writing to the parent or guardian within two (2) calendar days for each use.

4503.2 Each school or program shall maintain records of each incident when physical restraint or seclusion was used. The records shall be maintained by the building administrator or designee and shall include:

- (a) The name, age, gender and grade of the student;
- (b) The date and time that physical restraint or seclusion was used;
- (c) The location where the physical restraint or seclusion occurred;
- (d) The names of the person(s) who imposed the physical restraint or seclusion;
- (e) The type of physical restraint or seclusion used;
- (f) The duration of the physical restraint or seclusion;

- (g) The reason for the restraint;
- (h) Whether the student had a behavioral intervention plan ;
- (i) Whether the child is on an IEP or Section 504 plan; and
- (j) Injuries to student or staff sustained or death resulting from the use of physical restraint or seclusion.

4503.3 The building administrator or designee shall report the use of restraint or seclusion to the superintendent of the Supervisory Union, or designee, whenever:

- (a) An individual staff member has engaged in the use of physical restraint or seclusion three (3) separate times on one or more students; or
- (b) There is injury or death to staff or student; or
- (c) Physical restraint has been used for more than ten (10) minutes; or
- (d) Any student has been restrained or secluded three (3) or more times per school year; or
- (e) A student is restrained or secluded who is not on a behavioral intervention plan; or
- (f) Any prohibited restraint or restricted form of restraint or seclusion for a given student is used.

4503.4 The Superintendent of the supervisory union or designee shall report the use of restraint or seclusion to the Department of Education whenever:

- (a) There is injury or death to staff or student ; or
- (b) Physical restraint has been used for more than fifteen(15) minutes;or
- (c) Any prohibited restraint, or restricted form of restraint or seclusion for a given student has been used.

4504 DEBRIEFING FOLLOWING USE OF PHYSICAL RESTRAINT OR SECLUSION

4504.1 Following each incident of physical restraint or seclusion, the building administrator or designee shall implement follow-up procedures that include:

- (a) Within two (2) school days, reviewing the incident with the student to address the behavior that precipitated the use of physical restraint or seclusion;
- (b) Within two (2) school days, reviewing the incident with the staff person(s) who administered physical restraint or seclusion to discuss whether proper restraint or seclusion procedures were followed;
- (c) An opportunity for parents to participate in the review of an incident of physical restraint or seclusion within four (4) school days
 - a. Parents shall receive prior written (including e-mail) notice of the review meeting; and
 - b. Meeting shall be convened at a mutually acceptable time and place;
- (d) Determining, in consultation with the parent or guardian, any specific follow up actions to be taken.

4505 TIME OUT ROOMS

A time-out room may be used to help a student to gain composure and may not be used for staff convenience or as a student punishment. A time out room shall be:

- (a) Unlocked at all times
- (b) Large enough to permit safe movement;
- (c) Adequately lit, heated, ventilated and free of sharp or otherwise dangerous objects;
- (d) Permit safe entry and exit and permit the student to leave at any time; and
- (e) Visually monitored at all times by an adult; and
- (f) In compliance with all fire and safety codes.

4506 ANNUAL NOTIFICATION

Annually, at or before the beginning of the academic year, each school shall inform all school personnel, parents and legal guardians of students enrolled in a public school, approved independent school or approved tutorial program of the policies pertaining to the use of restraint, seclusion and time out and the intent to emphasize the use of positive behavioral intervention and supports and its intention to avoid the use of physical restraint to address challenging student behavior;

4507 COMPLAINTS AND INVESTIGATIONS

4507.1 A parent or school personnel may file a complaint regarding the use of, physical restraint, seclusion, or time-out at any time in accordance with school district policy.

4507.2 The complaint shall be in writing and shall be directed to the principal of the school or director or administrator of the program in which the student participates.;

- (a) If the person filing the complaint is unable to submit the complaint in writing, the recipient of the complaint shall complete the form based on a verbal complaint. In this case, the complainant shall be provided with a copy of the complaint.

4507.3 All complaints shall be investigated and written findings issued within thirty (30) days;

4507.4 Unresolved complaints shall be directed to the superintendent of the Supervisory Union where the student resides in accordance with the school board's established complaint process. A student on an individualized education plan (IEP) or Section 504 Plan may also use the dispute resolution options available under Rules 2365.1.4 – 2365.1.6, if appropriate.

4508 MONITORING AND CORRECTIVE ACTION

The commissioner shall review reports received pursuant to Rule 4503.4 and identify those schools in need of additional training and, when the data reflect an over-use of these interventions, shall direct the school to work with the department to develop a

corrective action plan.

4509 STATE APPROVED TRAINING

The Department of Education shall maintain a list of approved training programs and provide technical assistance to schools in need of providing restraint and seclusion training to their staff.

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